



## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

[COE-2022-0005]

#### **Navigable waters of Knik Arm within the explosive arc of Six Mile Munitions Storage Area on Joint Base Elmendorf-Richardson, Alaska; restricted area.**

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is amending its restricted area regulations to establish a restricted area within the explosive arc of the Six Mile Munitions Storage Area (MSA) on Joint Base Elmendorf-Richardson (JBER). The restricted area is located within the navigable waters of Knik Arm which are a part of the Six Mile MSA explosive arc, extending from the shoreline of JBER to the outward limits of the arc. Establishment of the restricted area will prevent all vessels and individuals from entering the explosive arc area of the Six Mile MSA at all times, except for authorized vessels and individuals in support of military training and management activities. This restricted area is necessary to prevent unauthorized vessels and individuals from entering the explosive arc during an inadvertent detonation, and exposure to hazardous noise and fragments from such a detonation.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW-CO (David Olson), 441 G Street NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or via email at david.b.olson@usace.army.mil.

**SUPPLEMENTARY INFORMATION:** In response to a request by the United States Air Force (USAF), Pacific Air Command (PACAF), and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 USC 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 USC 3), the Corps of Engineers (Corps) is amending its restricted area regulations to establish a permanent restricted area in the navigable waters of Knik Arm adjacent to JBER, Alaska. The restricted area will allow the USAF PACAF 673<sup>rd</sup> Air Base Wing to prevent all vessels and individuals from entering the explosive arc area of the Six Mile MSA at JBER at all times, except for authorized vessels and individuals engaged in support of military training and management activities. This restricted area will be in place as a precautionary measure to protect the public from entering or being within the explosive arc during an inadvertent detonation, and encountering hazardous noise and fragments from such a detonation.

The proposed rule was published in the *Federal Register* on July 13, 2022 (87 FR 41637). The regulations.gov docket number was COE-2022-0005. Concurrently, a local public notice for the proposed restricted area was sent out from the Alaska District. No comments were received in response to the proposed rule.

### **Procedural Requirements**

a. *Regulatory Planning and Review.* This final rule is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011) and it was not submitted to the Office of Management and Budget for review.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The restricted area is located in Knik Arm, adjacent to JBER, within the explosive arc area of the Six Mile MSA and the restricted area is necessary to protect public safety. Small entities can continue to utilize navigable waters outside of the restricted area. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* An environmental assessment (EA) has been prepared for the establishment of this restricted area. The Corps has concluded that the establishment of the restricted area will not have a significant impact to the quality of the human environment and, therefore, preparation of an EIS is not required. The final EA and Finding of No Significant Impact may be reviewed at the Alaska District Office, 2204 3<sup>rd</sup> Street, JBER, Alaska 99506.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, it is not a federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found that under Section 203 of the Act, small governments will not be significantly and uniquely affected by this rulemaking.

e. *Congressional Review Act.* The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, including a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

#### **PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.1303 to read as follows:

**§ 334.1303 Navigable waters of Knik Arm within the explosive arc of the Six Mile Munitions Storage Area off the northeastern side of Joint Base Elmendorf-Richardson; restricted area.**

(a) *The area.* The restricted area consists of the waters with an area defined as beginning at a point on shore at latitude 61°17'35" N, longitude 149°50'3" W; thence northward in an arc to the mid-arc point at latitude 61°18'19" N, longitude 149°50'6" W; continuing northward in an arc to the end point on shore at latitude 61°18'36" N, longitude 149°49'1" W. The datum for these coordinates is NAD-83.

(b) *The regulation.* The restricted area described in paragraph (a) of this section is permanently closed for public use at all times. No persons, watercrafts, or vessels shall enter, or remain, in the area except for those authorized by the enforcing agency.

(c) *Enforcement.* This regulation will be enforced by USAF PACAF 673<sup>rd</sup> Air Base Wing.

Thomas P. Smith,  
Chief,  
Operations and Regulatory Division  
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